



# The Two Pillars in the Fight against Serious Organised Crime in Italy: An Assessment

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## Abstract

Several measures and instruments have been adopted in Italy to fight against serious organised crime. In this framework, the 'mafia-type association' offence (Article 416 bis c.c.), and the National Anti-Mafia Directorate (DNA) can be considered as the two main pillars of the whole system, at least from a historical point of view (the former, from a substantial law perspective; the latter, from an organisational-procedural one). The aim of this article is to analyse and assess (vis à vis the experience acquired on their practical implementation) these two tools. The evaluation (based on the results of a focus group with 5 DNA Prosecutors, and on the analysis of the relevant literature) allowed to highlight their strengths and limits, as well as to discuss the possible exportability of the Italian experience to other countries.

**Keywords:** Organised crime; Mafia; Anti-mafia measures; Investigations; Prosecutions; Assessment; Italy; Mafia-type associations; Anti-Mafia Directorate; Criminal law; Criminology

## Introduction

The participation in a criminal organisation in Italy is punished by Article 416 of the criminal code (titled '*associazione per delinquere*', i.e. association to commit offences). This general provision, within the Italian code since its promulgation in 1930, is applicable to all the cases in which '*three or more persons conspire with a view to committing offences*'. It foresees different penalties for those initiating/organising/leading the criminal association (from three to seven years), and those merely participating in its (criminal) activities (from one to five years).

Until the beginning of the 80's, members of the Italian traditional criminal groups (in particular, the Sicilian Cosa Nostra, the Calabrian 'Ndrangheta, the Campanian Camorra) were investigated, prosecuted and punished by using this general criminal offence. However, when dealing with these sophisticated forms of criminal associations, Article 416 presented some severe limitations and gaps. The most important one was linked to one of its necessary elements, i.e. the need to clearly identify and prove the 'criminal aim' of the organisation [1]. Indeed, according to Article 416, in order to punish someone belonging to a criminal association is not

i) Even if this contribution shall be considered the result of a joint effort, sections' authorship is as follows: Gabriele Baratto (Sections 1, 3, 5.1), Andrea Di Nicola (Sections 4 and 6), Barbara Vettori (Sections 2 and 5.2).

sufficient to demonstrate his/her mere membership. Two other elements need to be proved: the existence of precise 'criminal program' of the organisation (and its adequacy to achieve the criminal aim), and the willing of the individual to join such a program [1].

However, in the case of mafia-type associations such a prove is not easy (or even feasible) to acquire, especially when their members operate in grey or para-legal areas [2]. Despite some attempts by Italian magistrates to apply Article 416 through highly extensive interpretations (at least questionable from a 'rule of law' perspective), the need for the introduction of a more specific legislative tool in the fight against the Mafia clearly emerged at the beginning of the '80s [1]. This situation was also enhanced by the fact that, during the same years, Cosa Nostra killed several politicians, law enforcement officers, journalists, and other civilians to harshly assert its power, and to hit the existing anti-mafia ecosystem [3].

In this context, the Italian Parliament adopted the so-called 'Rognoni-La Torre Law' (Law n. 646/1982) introducing within the criminal code a specific offence dedicated to mafia-type associations, i.e. Article 416 bis. This significant change allowed, for the first time, both to recognise the Sicilian Mafia as a serious organised crime group within the Italian legal system [4], and to introduce a clear distinction between 'simple' criminal groups (Article 416 c.c.) and the mafia-type associations (Article 416 bis c.c.).

At the same time, starting from '60s, an alarming asymmetry in the contrast activity to serious and organised forms of crime in Italy began to emerge. From the one hand, mafia-type associations (but also internal terrorist groups) started to be more and more organised, and increased the territorial scope of their activities, not only outside their 'traditional' Italian regions but also at the translational level. To the other hand, investigations and prosecutions were very fragmented, and the judicial cooperation among the different local public prosecutor offices was very limited. This situation implied very significant shortcomings [5], and the investigative activities resulted to be ineffective because of the defragmentation of information and evidences among different investigators among the country.

To partially solve this problem, specialised working groups of magistrates (*pools*) dealing with particular crimes were spontaneously formed within some local public prosecutor offices. This is the case, for instance, of the pool dealing with internal terrorism managed by Bruno Caccia in Turin, or the investigative cooperation initiatives run by Piero Luigi Vigna in Florencia [6]. Beside this preliminary initiatives, the first structured pool of magistrates specifically dedicated to mafia-type associations was the one established in the

early '80s at the public prosecutor office in Palermo by Rocco Chinnici: it was initially composed, beside its coordinator, by Giovanni Falcone, Paolo Borsellino, and Giuseppe Di Lello [7].

However, the need for a higher level of investigative coordination was clear also at the national level. Indeed, as clearly pointed out by Giovanni Falcone, Italian Mafia should be considered as a unitary and pensively phenomenon, transcending single offences, and thus single investigations and trials [8]. He strongly supported the introduction of a central prosecution office at the national level: this aim was achieved by Legislative-Decree 367/1991 (converted with amendments into Law 8/1992) that instituted the Italian National Anti-Mafia Directorate (hereinafter referred to with the acronym 'DNA'), a central office aimed at coordinating investigations and prosecutions on serious and organised forms of crime [9,10]. Unfortunately, this new Directorate became operative only after Giovanni Falcone's murder by Cosa Nostra in 1992.

Beside the several measures and instruments introduced in Italy to fight against serious organised crime [8], Article 416 bis and the DNA can be considered as the two main pillars of the anti-mafia system, at least from a historical point of view. The former, from a substantial law perspective; the latter, from an organisational-procedural one.

## Aim and Methodology

The aim of this paper is to analyse and assess the two pillars in the fight against serious organised crime in Italy, i.e. Article 416 bis of the criminal code (mafia-type association offence) and the National Anti-Mafia (and Anti-Terrorism) Directorate.

First, the key features of both the instruments will be presented. Then, they will be assessed *vis à vis* the experience acquired in Italy on their practical implementation. Such an evaluation is grounded on the results of project AMOC<sup>1</sup> [11], and on the analysis of the relevant literature.

More in detail, during the AMOC project, a focus group with a selected sample of Deputy National Anti-Mafia Prosecutors of the DNA, held at the DNA Headquarters in Rome took place.<sup>2</sup> This allowed to gather relevant information

1 AMOC was a tender financed by the DG HOME of the European Commission aimed at assessing measures against organised crime in the EU. The final study of the project (Di Nicola et al., 2014) was directed and coordinated by Andrea Di Nicola (University of Trento), Philip Gounev (at that time, Center for the Study of Democracy), Michael Levi (Cardiff University), Jennifer Rubin (RAND Europe), and Barbara Vettori (at that time, Catholic University of Milan). The parts of the AMOC study on which the present contribution relies on were carried out by the three authors of this article.

2 The following 5 Deputy National Anti-Mafia Prosecutors took part in

from key observers/experts by asking them questions in a group where they were free to interact among each other. Participants were asked by researchers their opinions, beliefs, perceptions towards both the mafia-type association offence and DNA-system. The focus group it is particularly useful when dealing with topics strictly related to daily work experiences: DNA prosecutors, in fact, are the more adapt to express judgments and opinions on the overall anti-mafia systems since they detain a unique and comprehensive picture both of the overall anti-mafia prosecutorial activity throughout the Italian territory and of the anti-mafia criminal and procedural legislation. Results of the focus group were analysed being aware of the possible limits of this method (even if strategies to mitigate these problems were adopted), among which: difficulties in generalisation from results; participants may be influenced by the context or by the moderator/s; findings may be influenced by the researcher/s own interpretation of the group's discussion [12].

Results of the focus group have then been integrated with the relevant criminological and juridical literature produced so far. This has allowed to gain a comprehensive and updated understanding of the strengths and limits of the anti-mafia tools under analysis, as well as to elaborate some hints on the possible exportability of the Italian experiences in other countries (presented in the conclusive section).

## Article 416 Bis of the Italian Criminal Code (Mafia-Type Association Offence)

### Scope, Definition, and Penalties

Article 416 bis, may be considered as a special offence, characterised by a higher degree of sophistication and complexity if compared to Article 416. Even if initially focused only on the Sicilian Cosa Nostra (i.e. the 'Mafia' in a strict sense), today Article 416 bis c.c. is more generally titled '*Mafia-type associations, including foreign ones*'<sup>3</sup>. This

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the focus group (in alphabetical order and explicating the position they had within the DNA when the focus group took place): Carlo Caponcello (liaison prosecutor with the Catania Anti-Mafia District Directorate and with Germany; expert of the DNA in drug trafficking); Gianfranco Donadio (liaison prosecutor with the Salerno Anti-Mafia District Directorate; DNA expert in subversion of constitutional law and terrorism); Antonio Patrono (liaison prosecutor with the Turin Anti-Mafia District Directorate; DNA expert in fighting OC infiltration into public administration and public procurements); Leonida Primicerio (liaison prosecutor with the Anti-Mafia District Directorates of Ancona, Messina and Perugia; DNA expert in money laundering and confiscation); Filippo Spiezia (liaison prosecutor with the Anti-Mafia District Directorates of Cagliari, Campobasso, and Milan; Director of the DNA International Cooperation Office; DNA expert in human trafficking and smuggling of migrants).

3 The original title of this provision as foreseen by the 'Rognoni-La Torre Law' of 1982 was changed from 'Mafia-type association' to 'Mafia-type associations, including foreign ones' by Law n. 125/2008.

means that the criminal offence can be applied to every serious criminal group resembling the mafia-type structure and features. More specifically, the last paragraph explicitly makes reference to:

1. Two traditional Italian-based criminal organisations (i.e. Camorra and 'Ndrangheta, which are clearly mentioned as punishable);
2. '*any other criminal association*' (i.e. Italian/foreign criminal groups), whatever their names, making use of the power of intimidation (due to the bonds of membership) to pursue goals typical of a mafia-type association (e.g. Italian *Sacra Corona Unita*; Albanian, Chinese, Nigerian, Russian criminal groups).

In Paragraph 3, the Article introduced a first legislative definition of what 'Mafia' means. More in detail, it extensively explains the how and *what* of mafia-type associations by illustrating the so-called '*mafia method*'. This way, the Italian legislator translated into a legal provision the sociological and criminological description of the typical *modus operandi* of the Sicilian Cosa Nostra [13]. Criteria of this method are met when a criminal association displays three specific and mandatory behaviours in pursuing its aims [1]:

1. *Power of intimidation*, based both on the association bond *per se* and the criminal reputation (i.e. criminal career and continuative use of violent and threatening means);
2. *Subjection*, a condition suffered by individuals (both internal and external) as a result of the power of intimidation;
3. *Code of silence* ('*omertà*'), reluctance of potential witnesses/internal members to denounce or collaborate with law enforcement agencies or institutional authorities as a result of the power of intimidation.

The "mafia-method", represents the basis as well to:

1. Commit criminal offences, *and/or*;
2. Acquire the direct/indirect management or control of economic activities, licenses, authorizations, public contracts and services, *and/or*;
3. Pursue unlawful profits or advantages for themselves or others, *and/or*;
4. To prevent or hamper the free exercise in voting, or to obtain votes for themselves or others in view of electoral consultations.

As a consequence, a mafia-type association may perpetrate criminal activities (e.g. racketeering, extortion, drug trafficking; etc.); illicit activities (e.g. any violations of labour/commercial legislation), and at the same time legal activities (e.g. running construction/waste companies, import-export businesses), underlying the peculiar character of entrepreneurship of the organised crime groups. Point 4, in particular, pertains to another illicit behaviour, which compared to the others, is less profit-oriented, rather more aimed at acquiring political power. The conditioning of local

communities in the voting procedures represents one of the main mean to infiltrate into the political sphere first, and economic sector secondly.

The mafia-type association offence can be applied proving the sole membership to the criminal group, being the predicate offences not a necessary element, contrary to the general provision envisaged by Article 416 c.c. [1,2, 14]

The penalties envisaged by Article 416 bis c.c. are particularly severe: from seven to twelve years of imprisonments for the sole membership, and from nine to fourteen years for the promotion, management and organisation of the association. In addition, each specific offence (e.g. drug trafficking, extortions, homicides) that may be committed within the criminal group shall be punished separately, thus further increasing the penalties [15].

### The 'External Complicity' to the Mafia-Type Association Offence

Practise has underlined links between members of Mafia-type associations and legal professionals such as politicians, lawyers, accountants, judges and representatives of police forces that, although not belonging to the association, offer support for the realisation of a part of the criminal programme. They offer specific services while remaining outside, but being aware and with the will to help and strengthen the criminal organised group. As a result, in the late '80s started a long-lasting debate (among academics and prosecutors, and judges) on the legal construction of this conduct, that led to the development of the jurisprudential institute of the "external complicity to the Mafia-type association offence". That is, accomplices ("fiancheggiatori"), although not being part of the criminal group, may contribute to a system of collusion that, in turn, reinforces the power of the organisation: for this reason they are prosecuted and convicted under Article 416 bis c.c. [15].

This judge-made creation envisages the possibility to criminalise individuals offering support to the Mafia-type association without actively and daily contributing to the achievement of specific criminal goals, or individuals participating in legal acts related to the association [1,16]. Consistently, the Italian Court of Cassation stressed that, while a real membership means a daily basis contribution to the activities of the mafia-type association, the external complicity is characterised by an external and temporary support to the criminal group (e.g. Court of Cassation, Section I, 94/199386).

According to the judgement n. 22327 of 21 May 2003 of the Court of Cassation, the external complicity to mafia-type

associations recurs when the external contribution meets the following requirements [17]:

1. *Sporadic and autonomous contribution* (no need of an effective and daily participation)
2. *Utility of the contribution* to pursue the criminal purposes of the association
3. *Causal contribution* in reinforcing and strengthening the mafia-type association (external complicity serves the criminal group and realises an effective improvement)
4. *General intent* of the accomplice to sustain the achievement of the illicit purposes of the mafia-type association (there is the awareness and the will of support the group)

Even though this jurisprudential extension of the scope of Article 416 bis c.c. represents a common practise within Italian courts, still remains a part of the doctrine and magistrates arguing the impossibility to foresee (by judicial extensive interpretation) forms of external complicity in offences which are associative *per se* (see, among others: [18,19]) This state of the art, in the opinion of some representatives of the academic and judicial sectors, needs to be clarified by the intervention of the legislator with the introduction of a specific offence defining and criminalising in the 'facilitation' of mafia-type associations activities. Such a provision, would allow to explicitly prosecute and punish accomplices, also with differentiated penalties from the ones envisaged by Article 416 bis c.c.: with the 'external complicity' indeed accomplices are considered equivalent to the members of the organisation [15].

### The Italian National Anti-Mafia and Anti-Terrorism Directorate (DNA)

#### Competences and Structure

The DNA is the central office aimed at coordinating investigations and prosecutions on serious and organised forms of crime in Italy [9,10]. Even if originally focused only on traditional mafia-type criminal associations, in the past few years and due to the expertise and effectiveness gained, the national legislation has expanded the coordinating role of DNA in order to cover also:

1. 'Foreign' (i.e. non Italian) mafia-type criminal associations operating in Italy and/or other criminal groups
2. Some specific and serious crimes usually (but not necessarily) perpetrated by criminal organisations and/or criminal groups (even if not of a mafia-type)<sup>4</sup>.

4 The offences are listed in Article 51(3bis) of the Italian criminal procedural code. For instance: human trafficking, slave trade, criminal groups set up for drug trafficking/cigarette smuggling/illicit waste trafficking/child prostitution/child pornography.

Furthermore, shortly after the terrorist attacks in Paris to the 'Charlie Hebdo' offices and to the Kosher supermarket in January 2015, the competences of DNA have been expanded also to investigations in the field of (national and international) terrorism (Legislative Decree 2015/7, converted with amendments into the Law 2015/17). Coherently, the complete official name of DNA switched from 'Italian National Anti-Mafia Directorate' to 'Italian National Anti-Mafia and Anti-Terrorism Directorate'.

DNA (formally incardinated at the Central Office of the Public Prosecutor at the Court of Cassation) is managed by the National Anti-National Anti-Mafia Anti-Terrorism Prosecutor (PNA), who is appointed by the Supreme Council of Magistrates (CSM) in accordance with the Ministry of Justice. The Directorate is also composed by 20 Deputy National Prosecutors (DNPs), appointed by the PNA.

The primary role of the DNA (as better explained below) is to coordinate the work of the 26 Anti-Mafia District Directorates (DDAs), that are the local anti-mafia prosecutor offices established within each district court of appeal in the Italian territory. To support this activity, the PNA (or the DPs) can make use of the central polices services specialised in organised crime, i.e. the multi-force Anti-Mafia Investigative Directorate (DIA), the Special Operational Group of the *Carabinieri* (ROS), the Central Investigation Service on organized crime of the *Guardia di Finanza* (SCICO), and the Central Operative Service of the National Police (SCO)<sup>5</sup>.

### Scope and Functions

National law provisions task DNA, through the PNA, with the coordination of the prosecution activities of the 26 DDA, which are vested with the power of investigating and prosecuting organised crime. Rather DNA, through the PNA, who avails himself/herself of the 20 Anti-Mafia Deputy Prosecutors, help maximise the effectiveness of the prosecutorial action carried out by the DDAs, that, in the end, retain the direct prosecuting power. Hence, DNA and DDAs have autonomous functions, powers and duties: there is not any hierarchical relation between DNA and DDAs.

To simplify, one can state that national laws provide DNA and PNA with the following two main functions: 1) push-function to coordination (*specific push*); 2) push-function to investigation (*general push*) [20].

<sup>5</sup> *Carabinieri*, *Guaria di Finanza*, and the National Police, beside the abovementioned central offices, have also specialised local sections in the cities where the 26 DDA are placed. These are: local Special Operational Groups (ROS) for *Carabinieri*, Investigative Groups on Organised Crime for the *Guardia di Finanza* (GICO), and local Organised Crime Sections (SCO) for the National Police. Furthermore, DIA has 12 regional offices covering the Italian territory.

**Push-function to coordination (specific push):** This function is finalised to investigative and judicial coordination, both general and specific. The general coordination involves the search for and identification of prosecutions that can be connected across the country. PNA reports these cases to interested DDAs and push them to coordinate each other. The specific coordination refers to already connected prosecutions handled by different DDAs, and aim to resolve conflicts when arise. This coordination activity by the PNA includes three phases:

- 1) Identification of connected prosecutions involving two or more DDAs via: a) access to the register of offences for which criminal proceedings have started; b) gathering data, *notitiae criminis* and information by examining investigative files, accessing the various DDAs databases (SIDDA, see below for further details), investigative interviews, and c) the analysis of all the information gathered;
- 2) Informing the interested DDAs, should they not know it yet, of the existence of connected prosecutions, so that they can coordinate among them to ensure timely and effective investigations by: a) exchanging, also via DNA, acts and information; b) informing each other about the guidelines they issued to judicial police; c) jointly carrying out specific investigative actions;
- 3) Coordination of connected prosecutions by the PNA, who shall ensure its effectiveness.
- 4) In order to achieve this, powers are assigned to PNA. According to art. 371bis of the criminal procedure code the PNA: in agreement with DDA prosecutors, grants the investigative coordination via the DDA prosecutors; temporary seconds DNA and DDA prosecutors to ensure flexibility and mobility when specific and contingent investigative and prosecutorial needs arise; gathers and analyse *notitiae criminis*, information and data on organised crime; issues specific instructions/guidelines to DDA prosecutors in order to avoid or resolve disputes on the procedures under which coordination of investigative activities is to be achieved; holds meetings with the concerned DDA prosecutors, in order to resolve disputes which, notwithstanding the issued specific instructions, may occur and prevent the promotion or effective operation of coordination; takes it upon itself by motivated order preliminary investigations relating to any of the offences within the mandate of the DNA if the meetings arranged to promote or achieve effective cooperation have been unsuccessful and coordination has not been possible. PNA may also express his/her legal opinion on conflicts of authority among DDAs during prosecutions (Articles 54, 54bis and 54 ter c.p.c.).

**Push-function to investigation (general push):** This function is not directly linked to connected prosecutions and is aimed at granting an effective investigative action, to

be delivered in a complete and timely manner. The general push consists in the intelligence activity performed by the DNA with the view to assist the work by DDAs. More concretely DNA follows all the prosecutions on certain criminal structures and exchanges the related information among interested DDAs; identifies new investigative trails; elaborates new investigative methodologies; organizes investigative interviews; singles out new phenomena on which to focus pre-investigative activities to be carried out with the support of DIA and of the special central and inter-provincial police services specialized in organised crime within the three Italian police forces; explores the diffusion of specific criminal groups beyond their original territories; pinpoints new money laundering patterns. Results of these actions are made available to DDAs and DNA prosecutors follow possible developments in their coordination function.

This push-function to investigation is strictly connected to the power, granted to the PNA (Article 371-bis, par. 2), to make use of DIA and of the specialised police services against organised crime within the three Italian police forces, by steering, through apposite guidelines, their investigative activities. PNA utilises these special law enforcement units against organised crime to carry out pre-investigations in order to get an exhaustive and complete picture of certain organised crime phenomena, independently from the results of specific prosecutions. Pre-investigations that PNA delegates to these judicial police forces is not aimed at gathering evidence on a specific offence, under a preliminary investigation, but at acquiring data that may be useful to strengthen certain specific prosecutions, from the one side, and, on the other, to identify new, unbeaten investigative tracks, due to their complexities and/or their location in the country and abroad.

**Other functions and tasks:** PNA and/or more broadly DNA is given by law other specific tasks to perform both the above functions (push function to coordination and push function to investigation): he/she may also get access to DDAs registers of criminal prosecutions and to the Anti-Mafia National Databases, named SIDNA (DNA Information System) and SIDDA (DDA Information System); may conduct investigative interviews with persons imprisoned in relation to organised crime-related offences and receives communications on the investigative interviews conducted by criminal investigation divisions to persons imprisoned in relation to organised crime-related offences.

Italian legislation also assigns further specific tasks to DNA in other fields. Among others, DNA participates in several institutional cooperation activities both at a national and international level providing its expertise and know-how. At a national level it is one of the members of the Italian Financial Security Committee, founded to combat international terrorism-related activities; the National

Agency for the Management and Use of Seized and Confiscated Organised Crime Assets [21]; the European Judicial Network; the Coordinating Committee for Surveillance of Major Public Works of the Italian Ministry of Interior; the Observatory on concrete and reinforced concrete founded by the Italian Supreme Council for Public Works.

At the international level, DNA is: the main receiver of rogatory letters in the field of organised crime; one of the members of the European Judicial Network; the Eurojust national correspondent for Italy; one of the members of the Multidisciplinary Group on Organised Crime, founded by the Council of the European Union; one of the members of the Horizontal Drugs Group of the Council of the European Union. DNA also, cooperates with the United Nations Office on Drugs and Crime (UNODC) and the European anti-fraud organisation (OLAF).

Since its foundation, the role of DNA considerably extended over time, and nowadays in virtue of its power and tasks at investigative and prosecution level this agency detains all the necessary features to perform a more pervasive role in the fight against organised crime [22]. So, for instance, with the entry into force of the Anti-Mafia Code<sup>6</sup> [23] PNA has been officially appointed as guarantor of the investigative effectiveness of criminal and preventive proceedings against organised crime all over country.

### **The DNA's Data Information Systems: SIDNA and SIDDA**

The functions of PNA could certainly not be achieved without expert information systems to gather, store, fuse and manage the immense informative assets relevant to investigate and prosecute very complex forms of crime. This, as mentioned above, is the SIDDA/SIDNA: DDA/DNA Information Systems.

SIDDA/SIDNA are strategic in order to identify links among DDA investigations, to increase effectiveness and efficiency of counteractions, to elaborate a comprehensive picture of organised crime all over the country and beyond. SIDDA/SIDNA are the result of the interconnection of different databases.

First, the local databases of the 26 DDAs (SIDDA). In every DDA data on each criminal proceeding on organised crime are inputted into the local database. Every DDA is conceived as an autonomous unit connected with a central system managing the common informative asset (the

<sup>6</sup> The Anti-Mafia Code (Legislative Decree n. 159 of 6 September 2011, and subsequent amendments) is a legislative act that aimed at consolidating and harmonising the many and scattered anti-Mafia provisions. However, it only partially reaches this goal (for further information: Visconti, 2018)

tactical database, see below). The process of population of local databases of DDAs is composed by a set of specialised activities which include the reading of relevant prosecution and judiciary acts and the extraction of relevant information from them (subjects, places, goods, communications, movements, associations, etc.). The extracted information is then archived in the DDA database, in a relational structure, and they are connected with the text of corresponding prosecution and judiciary acts.

Second, a central information system (SIDNA) for the integration and rationalization of information on organised crime. This is set up and managed by the DNA. The SIDNA is used both by each DDAs in order to acquire an overall knowledge on information deriving from investigations carried out all over the national territory, and DNA for planning and coordinating investigative and prosecution activities on organised crime. In particular, SIDNA is composed of two different databases the national “tactic” database (*TATTICA*), and of the the national “strategic” database (*STRATEGICA*).

The first is the national “tactic” database (*TATTICA*), resulting by the integration of the information coming from the 26 local databases of DDA. At the basis of SIDNA are the DDA databases, i.e. SIDDA. SIDNA detects information of common interest and send alarms/reports to the periphery, i.e. to the interested DDA. Information coming from the DDA are connected and integrated in a centralised system. Then they are compared and merged if they are referred to the same facts, places, subjects, goods in order to obtain an “unified” view of the overall criminal phenomenon. When available, identification data of investigative and judicial measures/actions are inserted together with data on subjects to whom they are referred, criminal associations connected to the identified subjects, and the entire texts of the related investigative and judicial documents.

The second is the national “strategic” database (*STRATEGICA*), which collects and fuses, in addition to the information coming from SIDDA, also information coming from: i) databases of the Ministry of Justice (such as REGE, General register of *notitae criminis*; SICP, Information System of Penal Cognition; SIPPI<sup>7</sup>, Information System of Italian Prefectures and Prosecutor’s Office of Southern Italy), acquired by DNA, and ii) other non-judiciary databases (such as the Tax Register database; the National Institute of Social Insurance (INPS) database; the Traffic Control Authority database). This strategic database allows to perform statistical elaborations and in-depth analysis fundamental to

foster the role of coordination of DNA.

The SIDDA/SIDNA system is based on the archiving both of entire documents and of mere information indexed in different relational databases. This structure allows, for instance, to visualize all the available materials and information on a *given person, with indications about the development of his/her personal criminal career, including connections with other criminal subjects or criminal groups or relevant facts.*

The central database SIDNA can be consulted by DDA prosecutors as well as by judicial police forces to obtain relevant information for their investigative and prosecutorial activity; by the PNA and the Deputy Anti-Mafia National Prosecutors to gather significant elements on the evolution of criminal phenomena, and thus exercising, when necessary, their coordination activities on the prosecutions conducted by different DDA over the territory.

## Assessing Strengths and Limits of the Tools

### Article 416 bis c.c.

**Strengths:** Article 416 bis c.c. demonstrated to be a particularly effective tool in the fight against organized crime in Italy: such a results emerged both from the opinion of DNA prosecutors during the focus group, and from the analysis of the relevant literature (see, among others, [24]).

First of all, it has overcome the limitation of Article 416 c.c. when dealing with mafia-type associations [1,5]. As explained above, Article 416 c.c. was applied in very few cases or with no success in the fight against traditional serious criminal organisations in Italy. The demonstration of guilty of the members of mafia-type associations (*mafiosi*) had to be proved in relation to each single offence: as a result, many criminal proceedings were closed acquitting charged individuals for insufficient evidence. Actually, Article 416 bis c.c. transformed cultural, criminological, and sociological concept of ‘Mafia’ into a legal category, an offence due to the mere membership in a criminal association as such [13].

Furthermore, the introduction of this criminal offence has been particularly crucial from an historical point of view, since it has formally acknowledged for the first time the existence of mafia-type associations in Italy with their peculiarities [4]. This has determined a change of perspective within Italian politicians, law enforcement authorities, practitioners and the general public. More in general, Article 416 bis c.c. dispatched its effectiveness in having paved the way for to the introduction of other mafia-related provisions. For example, the so-called ‘*hard prison regime*’ for Mafia members (Article 41 bis p.a.a.), and the set of personal and

<sup>7</sup> The SIPPI database aims to manage data and information related to seized and confiscated goods from organised crime groups during prosecutions. It produces a form related to a good containing information on its consistency, destination or use.

financial preventive measures (*ante o praeter delictum*) against Mafia-type associations. The personal preventive measures are intended to prevent certain individuals considered to be socially dangerous as underlined by Article 416 bis c.c. from committing offences, and regard in particular special surveillance for public security and obligatory residence. While the financial preventive measures, are aimed at attacking the illicit capitals gained by Mafiosi through their criminal activity, and concern civil confiscation (the so-called '*confisca di prevenzione*'). Originally disciplined by Law n. 575/1965, as amended by Law n. 646/1982, at present the personal and financial preventive measures are regulated by the Anti-Mafia Code, that is a consolidated text of anti-mafia provisions. According to the opinions of DNA prosecutors participating to the focus group this comprehensive anti-mafia system, is particularly effective since it is tailored on the peculiarities of Mafias, and especially on their entrepreneurial and profit-oriented character.

Finally, Article 416 bis c.c. makes it possible to tackle the entrepreneurial feature of current serious organised criminal organisations, as well as their capacity to establish a network with politicians and the 'legal world' in general, and to control and unduly influence economic activities, also through the power of intimidation and code of silence. In such cases, as explained by DNA prosecutors, the added value of such a provision is the possibility to implement special investigative tools beforehand, when evidence of specific crimes has not been gathered yet, but there is only a suspect that a group of people is involved in mafia-related activities. Indeed, Article 416 bis c.c. enables law enforcement authorities, for example through the use of interception of communications, to investigate the links between the members of Mafia-type associations and the "legal world" (i.e. existence of grey areas), and to discover possible crimes being committed. The use of these special tools is not allowed during the investigations related to the participation in 'simple' criminal association (Article 416 c.c.).

**Limits:** The major limitations suffered today by Article 416 bis are linked to its judicial application, and more in detail to the difficulties in interpreting the sociological definition of 'mafia-method' in some specific cases.

More in detail, on the one hand Article 416 bis c.c. is theoretically applicable both to typical Italian Mafias (i.e. Cosa Nostra, 'Ndrangheta, and Camorra) and to other criminal groups (also foreign ones). On the other hand, concerning the latter the mafia-type association offence is in practise rarely applied due to the difficulty to prove (or even recognise) the typical manifestations of the mafia-method. This is particularly true in the case of three types of criminal associations [25-29], i.e.: *foreign* criminal groups

(e.g. Albanian, Chinese, Nigerian criminal groups<sup>8</sup>) [30,31], *indigenous* criminal groups different from the traditional ones (e.g. the so-called 'Mafia Capitale'<sup>9</sup>) [28], *de-localised* manifestations of the traditional Italian criminal associations in non-traditional geographical areas, i.e. outside their Regions of origin (e.g. 'Ndrangheta in Northern Italy).

In all these cases, the evaluation on the existence of the mafia-method is left to the interpretation of magistrates. However, today there is not a common and shared judicial interpretative position, even within the Court of Cassation. Two major currents exist [26,28]. The first one calls for a strict interpretation of Article 416 bis: i.e. the use of intimidation, subjugation and the code of silence by the criminal association shall be demonstrated concretely in every specific case. The second position relies in a broader interpretation of the elements of the mafia-method. For instance, in the case of de-localised organisations of the traditional Italian Mafias should be sufficient to demonstrate their potential power of intimidation. This interpretative position is more focused on the intra and inter-organizational dimension of the criminal group, rather than on its concrete manifestation [28,29]. The lack of a homogenous interpretation is leading to controversial applications of Article 416 bis, even in the different degree of judgment of a same trial [28]. More in general, the number of reported convictions for 416 bis c.c. still remains low [32], and in this framework prosecutors often resort to other types of offences to punish criminal groups other than the traditional one, such as 416 c.c.. A legislative solution to this existing judicial debate seems necessary: the penalties associated with Article 416 bis are particularly severe, and (from a rule of law perspective) leaving such an important issue to case-by-case interpretation by the courts is critical, especially in the absence of common interpretive guidelines from the Court of Cassation.

The second limitation is linked to problems in recognising, today, the use of the mafia-method even for tradition Italian Mafias. As described, this legal tool was created in 1982 and was tailored on the features of the Sicilian Cosa Nostra (even if shared also with the other traditional criminal groups, such as 'Ndrangheta and Camorra, see for instance: [33]. Nowadays these characteristics remain, but new ones are emerging, related primarily to the entrepreneurial character

8 Several studies analysed the foreign criminal groups operating in Italy (Paoli, 2007; Terenghi and Piol, 2019).

9 The so-called 'Mafia Capitale' was a criminal association that operated in Rome from 2011 to 2014, and headed by Salvatore Buzzi (prejudiced in relation to several crimes), and Massimo Carimati (former member of the Banda della Magliana - an historic criminal group operating in Rome from 1977 to 1993 - and of the Nuclei Armati Rivoluzionari - a fascist terrorist organisation operating in Italy from 1977 and 1981). It consisted in a wide (criminal) network of collusive relations among criminals, public administration officials, politicians, business man, and private companies (Greco, 2019).



of the Mafias. For instance, in some cases, it is easy to prove the infiltration in the legal economy, but at the same time it is particularly challenging to prove the presence of the mafia-method. Consistently, more often investigations and prosecutions started under Article 416 bis c.c. fail to determine convictions under the same offence. As pointed out by Dalla Chiesa and Panzarasa [34], traditional serious criminal organisations have two evolutionary phases. First, they establish their power by using force, violence and coercion; then, they exploit the acquired power through a wide network of collusive relationships with the 'legal world'. Hence, the current description of mafia-method runs the risk to be rapidly overtaken by the continuous metamorphosis of the Italian serious criminal associations, that are now able to act without the use of violence, but by resorting to other means, such as a wide use of corruption [35].

### The DNA-System

**Strengths:** First of all, the effectiveness of DNA lies in the fact that it is an instrument to promote coordination in the fight against organised crime. Both legal basis and practices of the DNA system go in this direction. Serious organised crime commits 'connected' offences all over their country of establishment and beyond: uncoordinated investigations and prosecutions would result in missing the broader picture, and therefore in a fragmented understanding of it. Coordination offers a wider knowledge of the organised crime phenomenon, and also makes it possible to effectively follow its evolution over time and space. Both DNA and all DDAs thus may count on a comprehensive view of all the dynamics of criminal evolution. As seen, the coordination carried out by DNA guarantees an effective sharing of the available knowledge with all interested DDA and to connect, when needed, two or more DDAs on specific cases. Furthermore, the coordinating role of DNA reduces the pitfalls stemming from the Italian judicial system that is based on the principle of territorial competence, which has profound limitations when dealing with organised crime. In fact, as also underlined by the literature [20,10], the fragmentation due to the territorial competence may promote competition among prosecutor offices, and a non-cooperative approach. While coordination reduces the risk of the latter and fosters economies of scale, producing a broader picture going beyond the knowledge and the competences of a single, local, judicial office or investigative body. So DNA activity allow to rationalise investigative activities over the national territory, and to avoid to jeopardise efforts by different DDAs working in parallel on the same cases/individuals. It must be noted that with the introduction of DNA in 1991, many authors and practitioners were worried that the coordination power of a new centralised structure would have implied, in its practical implementation, an interference (or even an external control) of the investigative initiatives of the local public prosecutors.

However, after over 30 years of experience, it is possible to state the investigative independence of the local of the public prosecutors has not been compromised in any way [10].

Second, the strategic approach of DNA resulted to be a key feature to anticipate, prevent and fight serious organised crime. DNA possesses a broad vision of situation of organised crime in Italy and of its evolution that stems from the inputs from and the collaboration with the various DDAs. Such a position makes it possible for DNA to set medium/long term targets, and predict future criminal developments. Such a concept of 'strategy' is at the heart of the DNA/DDA system, and it was in the mind of judge Giovanni Falcone when he had this intuition. The lack of a strategy, in fact, is the biggest vulnerability and weakness of any response to serious organised crime. More in general, the strategic vision of DNA led to a new general perception of the mafia-type associations, overcoming the narrow and sectorial vision ineludibly determined by the previous fragmented judicial response [10].

The strategic role of DNA in the fight against organised crime includes also the possibility of conducting pre-investigations (Article 330 of the criminal procedural code), i.e. activities for the collection of pieces of information that can be used to discover the *notitia criminis*, that once transmitted to the relevant DDAs, allows the formal development of investigation/prosecution activities. In this regard, the most outstanding example is the 'investigative interview' (Article 18 bis of the penitentiary regulation act), i.e. the possibility for PNA to speak with detained persons affiliated to criminal organisations and with the aim of acquiring useful elements that, once elaborated by the DNA, are provided to DDAs that can use them to better coordinate and/or carry out investigation/prosecution activities. DNA collects also a number of information through the cooperation with other bodies, thus obtaining more comprehensive information on organised crime that is shared with DDAs and other bodies (e.g. DIA and police forces in general) with the aim of improving and providing impulse to the development of investigations and prevention activities against organised crime. This is the case e.g. of financial investigations: the Financial Information Unit at the Bank of Italy transmits both studies, pieces of research, etc. and (above all) reports of suspect financial transactions to DIA and to DNA to be further analysed. The results of such analysis are used to develop further strategies and are provided to the competent DDAs for the concrete conduction of investigations/prosecutions. Finally, the participation of DNA in several national and international bodies follows the same strategical aim: on the one hand the expertise provided by DNA fosters these bodies in their activities against organised crime, on the other information and data exchanged within these bodies allow DNA to gather significant assets to

improve the comprehensive knowledge on organised crime and to be used for the development of specific strategies deployed through DDA in the territory. This is the case e.g. of the participation into the Coordinating committee for surveillance of major public works, or in the Observatory on concrete and reinforced concrete. The Italian criminal system is based on the principle of the 'mandatory penal action', i.e. when a public prosecutor receives the information that a crime may have occurred (*notitia criminis*), s/he has to start investigating without any possibility of 'prioritising', e.g. concentrating on more serious crimes. For this reason, also DDA cannot set any priority: they have to start their investigation/prosecution as soon as they receive a *notitia criminis* related to the offences for which they are competent. The push-function to investigation by DNA is, anyway, of utmost importance to strategically guide the action of DDAs. In fact, by strategically searching for information which are still not evidence but that can turn into evidence later on and for now 'produce' investigative paths on which to focus, it can help DDAs in focusing their limited resources and in working more effectively.

Another strength of the DNA system relies on the 'specialisation' of the magistrates, that starts from the recruitment and training of the staff employed by DNA and DDAs. The DNA system is effective because it focuses and specialises on serious forms of organised crime and organised criminal activities. Specialisation in every aspect of organised crime is fundamental, especially as regards investigations of certain organised crime-related offences such as money laundering, corruption, and infiltration into public administration. This is the reason why in the past few years, for instance, special attention was paid by the Deputy Anti-Mafia Prosecutors not only to traditional Mafias, but also to international cooperation and influence coming from foreign crime groups.

Furthermore, the effectiveness of the coordinating role of the DNA deals also with the success of its SIDDA/SIDNA information system, where all data on investigations, prosecutions and criminal organisations are stored, thus boosting investigating activity. As suggested by the DNA prosecutors participating to the focus group, these centralised information systems are the 'key' towards an effective national investigative/prosecution strategy against serious organised crime groups. The SIDDA/SIDNA allows both to 'connect the dots' grasping the broader picture, and to store and immediately find all the information necessary for investigations and prosecutions [36]. This working method relies on the sum of all information obtained by different investigating bodies in the field of serious organised crime and also on their comparison and analysis. In this regard, the promptness of each public prosecutor office in putting new records into the integrated database is crucial. The phase of

data collection and analysis assure more contacts between public prosecutor's offices and police forces, as well as continuous information exchange between DNA, DDAs and DIA [20,37].

Last but not least, the role of DNA as a contact point demonstrated to be a key feature for cross-border cooperation. The International cooperation office of the Anti-Mafia Directorate is in charge of developing and expanding the relationships with political/judicial/prosecutorial institutions engaged in the fight against organised crime in other states, as well as of information and data exchanging in relation to transnational organised crime. To implement the coordination of the investigation and prosecution, the International cooperation office is also expected to acquire, release, and update news reports, information, and data about international criminal groups, which are collaborating with local mafias in illegal activities. DNA is the Italian contact point for judicial cooperation and has a central role as regards mutual legal assistance (i.e. the DNA prosecutors send/receive rogatory letters to/from foreign judicial bodies to investigate and/or perform other actions in its/their territory) and mutual recognition not only of judicial decisions but also of investigative measures. The responsibilities of the DNA in this regard include also the provision of news, information, and data to the DDA on foreign cases, which could lead to instituting new investigations or supplement an ongoing investigation [38]. The channelling of all the judicial cooperation activities from and to Italy through DNA is a very productive way of proceeding. Also in this case the centralisation of information, while considering the territorial needs, helps maximise effectiveness and make international cooperation very productive. DNA, in fact, has the general picture and is useful both for requests sent to Italy and for requests sent from Italy.

**Limits:** One of the most important limits of the DNA-system emerging from both the analysis of the existing literature [10], and the opinion of DNA prosecutors is linked to the reluctance of some local public prosecutor offices to fully implement the collaboration activities with the central office. DNA representatives participating in the focus group highlighted that, in a few cases, some DDAs fail to insert all the relevant data into the SIDDA/SIDNA system. For instance, some local offices limit the sharing of investigative documents to closed cases, thus excluding the information related to ongoing operations [20]. This problem was clearly underlined by a Resolution of the Supreme Court of Magistrates (22/IN/2011) in which emerged a clear statistical divergence between some DDAs that diligently input all the relevant data on the SIDDA/SIDNA system, and some others with serious deficiencies and delays in data entry [10,20]. Such situations prevent DNA from fully deploying its coordination potential and above all from acquiring all the

necessary information on the most recent developments of organised crime activities in all its forms. This 'reluctant attitude' may affect DNA functioning, as well as the work of other DDAs that could be potentially interested into the same investigations. In other terms, such a situation (that is less and less frequent) may produce a partial paralysing effect on the entire DDA-DNA system as conceived by the national legislation.

A second limitation consists in the existing asymmetries between the tasks of DNA and DDAs. In the past few years, national legislation has expanded the competences and tasks of DDAs to crimes not originally included in the mandate of these bodies. This was often done with a frenetic and uncoordinated legislative activity, motivated by the need to solve (real or alleged) emergencies [10]. The provisions that have expanded DDAs tasks (e.g. human trafficking, child pornography/prostitution) do not individuate a competent and centralised body with coordinating functions (nor indicate the DNA as this body). Furthermore, Law 125/2008 expanded the tasks of DNA also to the prevention of organised crime activities: such a situation widened the disconnection between the competences of DDAs and DNA. At the same time, more recently the Legislative Decree n. 2015/7 (converted with amendments into the Law n. 2015/17) introduced another asymmetry concerning investigations/prosecutions in the field of terrorism. Indeed, this new coordination task of the DNA has not been paired with a consistent increase in the competences of the DDAs. This means that, at a local level, anti-terrorism investigations may be carried out by public prosecutors other than those appointed to the DDA [6].

Lastly, in some cases, the organised nature or the mafia-type components of a crime are not immediately evident. For this reason, some offences are (at least initially) prosecuted by the ordinary prosecutor's offices instead of the competent DDAs. This happens in particular for those crimes that are functional to the life of the criminal organisation. In such cases the competence is normally attributed to the ordinary prosecutor's office until it is discovered that such offences are functional to a criminal association. There are several crimes that can possess this functionality, such as predatory crimes, smuggling of goods, and arm trafficking. In order to overcome the possible difficulties emerging from such situations, many general prosecution offices have drafted protocols together with DNA/DDA to individuate the potential crimes that are likely to be committed in the context of a criminal association and that are therefore assigned to the relevant DDAs. Examples of such crimes are murders/attempted murders committed by members of criminal associations, drug related crimes, racketeering, money laundering, etc.

## Conclusion

The specific 'mafia-type association' offence (Article 416 bis c.c.) has made it possible to overcome the limits of the general provision on 'association to commit crimes' (Article 416 c.c.) when dealing with complex and serious criminal organisations that have deep roots in the country. It has given magistrates the ability to initiate investigations (also using special investigative tools) and punish *mafiosi* for their sole membership, regardless of the commission of other specific crimes. This legal instrument has thus proven to be particularly effective, even if at present some amendments seem necessary to adapt the provision to the changing scenario of organised crime in Italy and the constant metamorphosis of traditional mafia-type associations.

At the same time, the DNA has proven particularly effective in combating organised crime because of several key features, namely: a) its ability to ensure coordination of investigations at the national level while preserving the independence of local public prosecutors; b) its attitude toward a 'strategic' vision of organised crime; c) the specialisation of both the DNA and DDAs members; d) the use of a 'strategic' and 'tactic' expert information system (especially when all local DDAs cooperate diligently in sharing all the relevant information); e) its role as a focal point to ensure effective cross-border cooperation.

Given the overall very positive evaluation, the experience gained in Italy could be exported to other countries. First of all, the introduction of an offence comparable to Article 416 bis c.c. seems to be a crucial point to counter both 'exported' Italian Mafias, and domestic organised crime groups that are particularly complex and deeply rooted in the territories. The *what* should be a criminal offence tailored to the specifics of the criminal groups in the country. The *how* should be a provision allowing to investigate individuals suspected of involvement in criminal group activities, even if specific predicate offences have not yet been proven, and to punish them (eventually) only for being members of the organisation.

Second, the adoption of a DNA-like organisational model (taking into account the legal and cultural factors of the country) would allow the development of a strong investigation and prosecution system against serious organised crime (transnational or not), combining the need for central coordination with the necessary decentralisation at the local level. However, this would only be effective in conjunction with an adequate information system, such as the one introduced by the DNA in Italy. The fight against organised crime requires a thorough knowledge of the phenomenon and concerted action to collect and disseminate information and data on it: information is the key to this goal.

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